

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 16950
[REDACTED],	)	
	)	DECISION
Petitioners.	)	
_____	)	

On September 30, 2002, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for the taxable year 1997 in the total amount of \$19,354.

On October 3, 2002, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not respond to the Tax Commission's hearing rights letter and have provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information showing the taxpayers sold real property in Idaho in 1997. The Bureau researched the Tax Commission's records and found the taxpayers did not file an Idaho individual income tax return for the taxable year 1997. Idaho Code section 63-3026A(3)(ii) states that income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from the ownership or disposition of any interest in real or tangible personal property located in Idaho.

The Bureau sent the taxpayers letters asking about the sale of the Idaho property and their requirement to file an Idaho income tax return. The taxpayers did not respond. The Bureau determined the taxpayers met the filing requirements of Idaho Code section 63-3030 and prepared an Idaho individual income tax return for the taxpayers. The Bureau sent the taxpayers a Notice of Deficiency Determination, which the taxpayers protested.

The taxpayers requested an extension of time in order to gather all the information on the sale of the property. The Bureau granted the taxpayers a two-month extension as the taxpayers requested. The taxpayers did not meet their extension deadline but they did contact the Bureau shortly thereafter and stated that the information would be sent very soon. The taxpayers did send the Bureau additional information, which it reviewed. The Bureau modified its original deficiency determination and sent the taxpayers notice of the modification. The taxpayers did not respond to the Bureau's modification, so the matter was referred for administrative review.

The Tax Commission sent the taxpayers a letter giving them two options for having the Notice of Deficiency Determination redetermined. The taxpayers did not respond. The Tax Commission sent the taxpayers a follow-up letter, but still the taxpayers failed to respond. Therefore, the Tax Commission decided the matter based upon the information available.

The taxpayers owned property in Idaho. In 1997, the taxpayers sold the property. The taxpayers did not report the sale to Idaho. Idaho Code section 63-3026A states that the sale of real property located in Idaho is considered to be Idaho source income. Therefore, if the gain on the sale exceeded the filing threshold for the taxpayers as provided in Idaho Code section 63-3030, the taxpayers were required to file an Idaho income tax return.

The taxpayers sold their Idaho property for \$190,000. The taxpayers provided information to the Bureau that showed their basis in the property was \$120,000. The taxpayers realized a gain on the sale of the property of \$70,000. This is well in excess of the filing threshold for nonresidents. The taxpayers had a requirement to file and report the gain on the sale to Idaho.

The Bureau's Notice of Deficiency Determination used the selling price of the property as its basis for computing the taxpayers' tax. Subsequent to the Bureau's initial determination, the taxpayers provided additional information, which the Bureau incorporated in a modified

determination. The Bureau's modified determination allowed the taxpayers a \$120,000 basis in the property and allowed the Idaho capital gains deduction. This reduced the taxpayers' tax substantially. However, when the Bureau sent the modified determination to the taxpayers, the taxpayers failed to respond.

The Tax Commission reviewed the Bureau's modified determination and found that the Bureau correctly determined the taxpayers' Idaho adjusted gross income based upon the information available. Furthermore, the taxpayers have provided nothing to show that the modified determination was incorrect. They have not met their burden of proof. Albertson's, Inc. v. State, Dept. of Revenue, State Tax Com'n, 106 Idaho 810, 683 P.2d 846 (1984). Therefore, the Tax Commission upholds the Bureau's modified determination of the taxpayers' Idaho adjusted gross income.

However, Idaho Code section 63-3026A provides for the computation of Idaho taxable income for nonresidents. It states that Idaho taxable income includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. In computing the Idaho taxable income, the standard deduction or itemized deductions, if applicable, and the exemptions shall be allowed in the proportion that Idaho adjusted gross income bears to total (federal) adjusted gross income. The Bureau's modified determination did not allow any personal exemptions or standard/itemized deductions.

The file contained information [Redacted]. [Redacted] Since Idaho references the internal revenue code for the determination of taxable income (Idaho Code section 63-3002), the taxpayers should be allowed the proration of their exemptions and itemized deductions (Idaho Code section 63-3026A). Therefore, the Tax Commission further modified the Bureau's

modified determination to include a proportion of the taxpayers' exemptions and itemized deductions.

WHEREFORE, the Notice of Deficiency Determination dated September 30, 2002, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1997	\$ 792	\$ 198	\$ 334	\$1,324

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of taxpayers' right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2004.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

#### CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, 2003, served a copy of the within and foregoing decision by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]